IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1001 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL MANAN HASAM BELAM

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1001 of 2002

MR SAURIN A SHAH for Petitioner No. 1

MR M A Bukhari, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/12/2002

ORAL JUDGEMENT

This is an application under Section 482 of the Code of Criminal Procedure, 1973 (For short, 'the Code') for setting aside an order dated 5.12.2000 passed by the learned Judicial Magistrate First Class, Dharampur in Criminal Case No.1467/2000 arising from C.R. No.I-90/2000 as well as an order dated 1.11.2001 passed by the learned Addl.Sessions Judge of Valsad at Navsari in criminal Revision Application No.64/2000. It seems that the contesting respondent has filed FIR before the above police station against the present petitioner for offence punishable under sections 468, 420 and 406 of IPC. It was mainly contended by the contesting respondent that the petitioner had agreed to sell his car to the respondent and the contesting respondent was required to pay installments in the bank in respect of the loan taken by the petitioner for the purchase of the said car. The contesting respondent also alleged in the said FIR that ultimately the vehicle was not transferred in the name of the contesting respondent, and therefore, the aforesaid offence was said to have been committed by the present petitioner.

2. Before the trial court, the present petitioner submitted an application for interim custody of the said car. The said application was dismissed by the said court by order dated 5.12.2000. The petitioner preferred Criminal Revision Application against the said order being Criminal Revision Application No.64/2000 unsuccessfully. Hence this petition.

3. It has been contended here that the petitioner is the registered owner of the car and he has not received any amount of consideration from the contesting respondent. He has also stated that only one instalment of Rs.21,000/- has been paid by the contesting respondent in the bank and nothing more has been paid either to the bank or to the petitioner. It is, therefore, contended that the vehicle cannot be permitted to be kept in open place before the police station and since the petitioner is the registered owner of the said vehicle, it would be appropriate to direct that the vehicle be put to the custody of the petitioner pending hearing and disposal of the said criminal matter against the petitioner.

4. Rule was issued and duly served on the contesting respondent also. But he has chosen fit not to appear before the Court. At the admission stage, learned Advocate Mr Pardiwala was appearing in the matter but thereafter, the contesting respondent made alternative arrangement. Therefore, he retired from the proceedings. Fresh intimation was given to the contesting respondent

but he has not found it fit to appear before the Court. Therefore, no assistance was rendered by the said two respondents. Therefore, I have heard the learned advocate for the petitioner and Mr M A Bukhari, learned APP for the State.

5. It is not much in dispute that the vehicle in question still stands in the name of the petitioner before the RTO and therefore, the petitioner continues to be the registered owner of the said vehicle.

6. It is also the case of the petitioner that though the vehicle was agreed to be sold to the contesting respondent, no amount was received by the present petitioner from the contesting respondent towards the sale proceedings except one instalment of Rs.21,000/- said to have been paid in the bank. It is also stated that the contesting respondent has not paid/deposited any other amount in the bank towards the installments and therefore, it would be in the fitness of things to permit the custody of the said vehicle with the petitioner.

7. Having regard to the facts and circumstances of the case and considering the fact that the petitioner continues to be the registered owner of the vehicle and considering the fact that he has not received any amount from the contesting respondent except one instalment said to have been paid by him to the bank and also considering the fact that the learned Advocate for the petitioner agrees to pay up the remaining installments to the bank, it would be in the fitness of things to permit custody of the vehicle with the petitioner. It is also required to be considered that it would not be in the interest of the parties to allow the vehicle tobe kept in an open place. Therefore, also the custody thereof should be given to the petitioner.

8. For the foregoing reasons, this petition is allowed. The order passed by the learned Magistrate as well as the Sessions Judge referred to above, are set aside. The muddamal vehicle being Jeep Car bearing No.GJ 15C 9917 shall be handed over to the present petitioner on following conditions:

(i) He shall furnish surety and bail bond in a sum of Rs. One lakh Sixty thousand for the presentment of the said vehicle before the said Court as and when so directed by the said court.

(ii) The petitioner shall not use the said

vehicle for any purpose other than the purpose for which it is registered.

(iii) The petitioner shall pay the balance of installments to the bank concerned.

(iv) The petitioner shall not create any burden on the said vehicle. He shall not transfer the said vehicle in whatsoever manner.

(v) Thhis will be an interim order which shall be subject to the ultimate decision of the trial court at the close of the trial.

Rule is made absolute accordingly. D.S. permitted.

26.12.2002 [D P Buch, J.]
msp